

1 Andrew H. Wilson SBN # 063209
WILSON, RYAN & CAMPILONGO
2 115 Sansome St., 4th Floor
San Francisco, CA 94104
3 (415) 391-3900
TELEFAX: (415) 954-0938
4

5 MICHAEL LEE HERTZBERG (MH-3335)
740 Broadway
Fifth Floor
6 New York, New York 10003
(212) 982-9870
7

8 Laurie J. Bartilson SBN 139220
BOWLES & MOXON
6255 Sunset Boulevard
9 Suite 2000
Los Angeles, CA 90028
10 (213) 463-4395
TELEFAX: (213) 953-3351
11

12 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF MARIN

15 CHURCH OF SCIENTOLOGY) CASE NO. BC 038955
16 INTERNATIONAL, a California not-)
for-profit religious corporation;) MEMORANDUM OF POINTS AND
17 Plaintiff,) AUTHORITIES IN SUPPORT OF
18 vs.) MOTION FOR LEAVE TO
19) COMPLETE DISCOVERY
GERALD ARMSTRONG; MICHAEL WALTON;)
20 THE GERALD ARMSTRONG CORPORATION,) DATE: December 16, 1994
a California for-profit) TIME: 9:00 a.m.
21 corporation; Does 1 through 100,) DEPT: 1
inclusive,)
22 Defendants.) TRIAL DATE: May 18, 1995
23)
24)

25 I. INTRODUCTION

26 Plaintiff Church of Scientology International ("the Church")
27 has brought this litigation as a necessary step to preserve its
28 ability to effect recovery from Gerald Armstrong upon receiving

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1 an award of liquidated, general, and punitive damages in the main
2 action formerly pending in Los Angeles, now consolidated before
3 this Court. Armstrong has sought to avoid the consequences of
4 the liquidated damages clause in the 1986 Settlement Agreement
5 and of his numerous violations of that Agreement by hiding his
6 assets. To that end, he transferred his real property, a house
7 on Fawn Drive in Marin County, to his friend and attorney,
8 defendant Michael Walton. This transfer was made without
9 consideration, although the house and land were apparently worth
10 in excess of \$397,500. Walton has, in turn, attempted to
11 transfer his interest in the Fawn Drive property to his spouse,
12 Solina Walton.

13 Armstrong and the Church, at the time they jointly moved to
14 consolidate these actions in Marin, stipulated that discovery
15 would continue. [Bartilson Declaration, Ex. A.]¹ Defendants
16 Michael and Solina Walton, however, have refused to permit
17 plaintiff to conduct the minimal discovery which plaintiff seeks
18 to prepare its case concerning these defendants: an inspection of
19 the Fawn Drive property by an appraiser, and a deposition of
20 Solina Walton. Mr. Walton, who represents both himself and Ms.
21 Walton, has asserted that these discovery actions are barred by
22 C.C.P. §2024, while at the same time complaining that Ms. Walton

23
24 ¹ In regards to the Los Angeles action, discovery is
25 substantially incomplete, with nearly a dozen witnesses still to
26 be deposed, outstanding written discovery, and motions to compel
27 yet to be brought. Plaintiff has worked diligently to try to
28 complete this discovery, with only minimal success, as
Armstrong's lawyer, Mr. Greene, has requested numerous
continuances. [Id., ¶ 3, and Ex. B.] Nonetheless, Armstrong, the
Gerald Armstrong Corporation, and the Church have agreed that
discovery in the breach and fraudulent conveyance actions may
continue, and are proceeding. [Id., ¶ 3.]

1 is prejudiced because she is unable to take any discovery.
2 Plaintiff's offers to stipulate to a reasonable extension of the
3 discovery cut-off so that discovery may be completed by all
4 parties has been met with silence. The Church accordingly seeks
5 leave of Court pursuant to C.C.P. § 2024(e) to complete its
6 discovery, and for sanctions against the Waltons for their
7 refusal not simply to cooperate, but even to communicate.

8 II. STATEMENT OF FACTS

9 This case was originally set to go to trial on September 29,
10 1994. Because the main action in Los Angeles has been stayed for
11 over a year, trial in that case was not set until November, 1994.
12 The illogic of trying the fraudulent conveyance action before
13 determining Armstrong's liability under the settlement agreement
14 led the Los Angeles Court to order the Los Angeles cases
15 transferred to Marin county. [Bartilson Dec., Ex. A.] Once the
16 cases were ordered transferred, this Court vacated the trial date
17 in this action, consolidated the cases, and set a new trial date
18 of May 18, 1995. [Id., Ex. C.] At the time of the transfer, the
19 parties to the Los Angeles action -- the Church, Armstrong, and
20 the Gerald Armstrong Corporation -- all stipulated that discovery
21 in that matter would continue, and began working together to set
22 a discovery schedule for additional depositions. [Id., ¶ 2.]²

23
24 ² Nonetheless, plaintiff has been confronted with
25 continuous delay from Armstrong and his counsel when it comes to
26 discovery. Due to his claimed unavailability, for example,
27 defendant Armstrong's deposition was not completed until October
28 20, 1994, and, because he refused to answer many questions,
plaintiff must now bring a motion to compel further answers. At
the same time, in deposition, Armstrong identified additional
breaches of the contract and additional witnesses that plaintiff
needs to depose. [Bartilson Dec., ¶ 4.]

1 In the fraudulent conveyance action, plaintiff sought an
2 inspection of the Fawn Drive property on September 27, 1993.
3 [Bartilson Dec., Exs. D and E.] Defendant Solina Walton did not
4 respond. Defendant Michael Walton objected to the inspection,
5 claiming, inter alia, that the inspection was requested after the
6 discovery cut-off. [Bartilson Dec., Ex. F.] Plaintiff also
7 noticed Solina Walton's deposition on October 4, 1994. [Id. Ex.
8 G.] Neither Mr. nor Ms. Walton objected to the deposition
9 notice, but neither appeared at the deposition. [Id., ¶ 9.] On
10 November 14, 1994, Michael Walton entered an appearance as Solina
11 Walton's attorney, filing a demurrer on her behalf. The demurrer
12 argues that Ms. Walton was prejudiced by being named as a doe
13 defendant after the discovery cut-off.

14 On November 17, 1994, plaintiff's counsel sent a letter to
15 Mr. Walton, offering to stipulate to an extension of the
16 discovery cut-off so as to allow the limited discovery still
17 needed by plaintiff, and to permit Ms. Walton to take the
18 discovery he claimed she needed. [Id., Ex. H.] Ms. Bartilson
19 received no response. Thereafter, she made several telephone
20 calls to Mr. Walton's office (leaving messages on his answering
21 machine) and sent a second letter to Mr. Walton, reiterating the
22 need for cooperation on discovery matters. [Id., Ex. I.] Again,
23 she received no response. [Id., ¶ 12.]

24 **III. GOOD CAUSE EXISTS TO GRANT PLAINTIFF LEAVE TO COMPLETE**
25 **DISCOVERY**

26 C.C.P. §2024(a) provides that a party is "entitled as a
27 matter of right to complete discovery proceedings on or before
28 the 30th day . . . before the date initially set for the trial of

1 the action." A postponement of the trial date does not operate
2 to automatically reopen discovery proceedings, but subsection (e)
3 provides in relevant part that:

4 On motion of any party, the court may grant leave
5 to complete discovery proceedings, . . . or to reopen
6 discovery after a new trial date has been set. This
7 motion shall be accompanied by a declaration stating
8 facts showing a reasonable and good faith attempt at an
9 informal resolution of each issue presented by the
10 motion.

11 Leave to complete discovery is discretionary, and depends
12 upon four factors: (1) the necessity for the discovery; (2) the
13 diligence of the party seeking the discovery, and the reason the
14 discovery was not previously completed; (3) the likelihood that
15 permitting the discovery would prevent the case from going to
16 trial on the appointed date; and (4) the length of time between
17 the two trial dates. C.C.P. §2024(e)(1)-(4). It is well-settled
18 that discovery provisions are interpreted liberally, with all
19 doubt resolved in favor of permitting discovery. Colonial Life &
20 Acc. Ins. Co. v. Superior Court (1982) 31 Cal.3d 785, 790, 183
21 Cal.Rptr. 810, 813, fn. 7-8; Greyhound Corp. v. Superior Court,
22 364 P.2d 266, 15 Cal.Rptr. 90; Davies v. Superior Court, 36
23 Cal.3d 291, 204 Cal.Rptr. 154.

24 Here, plaintiff requires the inspection of the property in
25 question in order to permit an appraiser to determine its current
26 market value. Plaintiff alleges that Armstrong fraudulently
27 conveyed the property to the Waltons, and that it can and should
28 be used to satisfy any judgment which plaintiff obtains against
29 Armstrong for breach of contract. The closer the appraisal is to
30 the date of trial, the more accurate that appraisal will be.
31 Hence, plaintiff has sensibly not requested the inspection

1 earlier.

2 Where real property is in dispute, inspections and
3 appraisals are routine, and are usually conducted by agreement
4 between the parties. Here, plaintiff has tried diligently to
5 work out a convenient and unobtrusive time when its appraiser can
6 view the property. The Waltons have not only refused to allow
7 the noticed inspection; they have refused to even communicate
8 with plaintiff's counsel.

9 Permitting the inspection will not delay the trial in any
10 way. Since the second trial date of May 18, 1995 is nearly 8
11 months from the original trial date, and five months from the
12 present, an inspection can easily be scheduled and completed more
13 than 30 days before the new trial.

14 Similarly, plaintiff did not take the deposition of Ms.
15 Walton earlier because ongoing settlement negotiations made it
16 unclear whether or not she would need to be added as a party.
17 When it became clear that none of the defendants were interested
18 in settlement, plaintiff served Ms. Walton with the complaint
19 herein, and noticed her deposition as soon as it was permissible.
20 Since neither she nor Mr. Walton bothered to object or appear,
21 their objections to the deposition are waived. C.C.P. §2025 (g).
22 Her deposition can easily be set and completed between now and
23 April 18, 1995. Plaintiff should be permitted to take this
24 deposition as well.³

25 ³ Apparently, the Waltons consider that Solina Walton needs
26 to take some additional discovery, beyond the discovery taken by
27 Michael Walton, in order to prepare for trial. Prior to making
28 this motion, plaintiff inquired of Mr. Walton what this discovery
was, and suggested that the parties stipulate to an extension of
the discovery cut-off, so that all of the discovery could be

1 IV. PLAINTIFF IS ENTITLED TO SANCTIONS FROM THE WALTONS FOR
2 THEIR REFUSAL TO CONFER

3 C.C.P. §2023(a)(9) provides in relevant part that,

4 Misuses of the discovery process include, but are
5 not limited to, the following:

6 * * *

7 (9) Failing to confer in person, by telephone, or
8 by letter with an opposing party or attorney in a
9 reasonable and good faith attempt to resolve informally
10 any dispute concerning discovery, if the section
11 governing a particular discovery dispute requires the
12 filing of a declaration stating facts showing that such
13 an attempt has been made. Notwithstanding the outcome
14 of the particular discovery motion, the court shall
15 impose a monetary sanction ordering that any party or
16 attorney who fails to confer as required pay the
17 reasonable expenses including attorney's fees, incurred
18 by anyone as a result of that conduct.

13 Here, plaintiff attempt to confer with Mr. Walton, the
14 attorney for both himself and Ms. Walton, by two letters directed
15 to Mr. Walton's office and post office box addresses, and to his
16 telefax, and by telephone. [Bartilson Dec. ¶10-12.] Mr. Walton
17 did not respond at all, forcing plaintiff to make this motion.
18 Accordingly, plaintiff seeks the costs of the making of this
19 motion, including its attorney's fees.

20 V. CONCLUSION

21 This case has been consolidated with a Los Angeles action,
22 former BC 052395, in which discovery is still ongoing. Time in
23 this case has been reset from September, 1994 to May, 1995.

24 Plaintiff requires an inspection of real property in possession
25 of defendants Michael and Solina Walton, and the deposition of

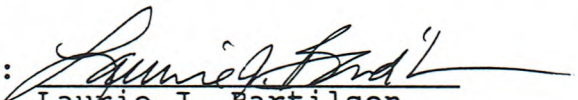
26 _____
27 completed. [Bartilson Dec., Ex. 4.] Plaintiff's counsel
28 received no response to her inquiry or her offer. [Bartilson
Dec., ¶¶ 11, 12.]

1 Ms. Walton, in order to complete discovery as to those defendants
2 in the fraudulent conveyance action. The Waltons have failed and
3 refused to confer with plaintiff concerning these reasonable
4 requests, and have refused to talk to plaintiff's counsel. Under
5 these circumstances, plaintiff's request should be granted, and
6 defendants Michael and Solina Walton sanctioned.

7 Dated: November 23, 1994

Respectfully submitted,

8 BOWLES & MOXON

9
10 BY: 
11 Laurie J. Bartilson

12 Andrew H. Wilson
13 WILSON, RYAN & CAMPILONGO

14 Michael Lee Hertzberg

15 Attorneys for PLAINTIFF
16 CHURCH OF SCIENTOLOGY
17 INTERNATIONAL

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On November 23, 1994, I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO COMPLETE DISCOVERY on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

MICHAEL WALTON
P.O. Box 751
San Anselmo, CA 94979

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party

served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on November 23, 1994, at Los Angeles, California.

**** (BY PERSONAL SERVICE)** I delivered such envelopes by hand to the offices of the addressees.

****** Such envelopes were hand delivered by Messenger Service

Executed on _____, at Los Angeles, California.

(State) I declare under penalty of the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

 Matt Ward
Print or Type Name

 Matt Ward
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)